IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL NO.837 OF 2005
IN
SUMMONS FOR JUDGMENT NO.945 OF 2003
IN
SUMMARY SUIT NO.2953 OF 2003

M/s.New Bharat Traders. ...Appellant.
Vs.
Chaudhary Abdul Majid Shahadat. ...Respondent.
....
Mr.A. N. Mulla for the Appellant.
Mr. Jayesh Bhatt for the Respondent.
.....

CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.

October 27, 2005.

P.C.

The Respondent is the Plaintiff in Summary Suit No.2953 of 2003. In para 8 of the Plaint, the Plaintiff has pleaded as under:

> "The Plaintiff files this suit as Summary suit on the basis of goods sold and amount due and payable at the foot of statement of account as also on the basis of dishonoured cheques. No relief not falling within the ambit of Order 37 Rule 2 has been claimed in the suit. Hence, the suit as

filed is maintainable as a Summary Suit."

In the statement of accounts, one of the items is, a sum of Rs.12,095/- as of 1.10.2001. The Plaintiff in para 3 has further averred as under:

> "As per the said account there is a sum of Rs.7,65,626/- due and payable by the Defendants to the Plaintiff as shown at the foot of the Statement of account."

In answer to the Summons for Judgment, the Appellant herein, filed their reply and opposed the grant of relief. The affidavit of Abdul Majid Shahabad Chaudhary in para 3 sets out that the claim is not admitted for the amount claimed. It is also set out that the suit is not maintainable under Order 37.

The Learned Judge by the impugned order dated 2nd August 2005 in Summons for Judgment No.945 of 2003 was pleased to direct the Appellant herein, to deposit the principal sum under two invoices viz., Rs.7,65,626/- within a period of 12 weeks and on such deposit, granted conditional leave.

At the hearing of this appeal, on behalf of the appellant, the Learned Counsel submits that the suit, considering averments in the plaint, including the cause of action and the suit being for amount at the foot of the account, could not have been treated as a Summary Suit and consequently, the reliefs prayed could not have been granted. On behalf of the Respondent-Plaintiff, the learned Counsel points out that the claim is based on invoices for goods supplied and received by the Appellant herein. That being so, the suit could be filed as a summary suit. The Learned Single Judge has only included the amount of the invoices and in so far as the interest is concerned, has made no order. It is, therefore, pointed out that this Court ought not to interfere with the said order.

In a summary suit, the Plaintiff can only claim the amounts which fall within the summary procedure and no other. If a part of the cause of action is based on the claim which does not fall under summary procedure, then the suit cannot be treated as a summary suit. At the highest, if the Plaintiff gives up the claim which does not fall under the summary procedure, then perhaps to that extent, the Summons for Judgment could still be considered. However, in the instant case, as pointed out earlier, there are

amounts which clearly do not fall under the summary procedure. In the light of that the impugned order dated 2nd August 205 is liable to be set aside. The appeal is allowed with no order as to costs and the Defendant, Appellant herein, is granted unconditional leave to defend the suit. The Appellant-defendant to file Written Statement within a period of 8 weeks from today.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)